NOTICE OF INTENT TO SUBMIT
A CLAIM TO ARBITRATION
UNDER SECTION B OF CHAPTER 11 OF
THE NORTH AMERICAN FREE TRADE AGREEMENT

V. G. GALLO ("GALLO")

Investor

v.

GOVERNMENT OF CANADA ("CANADA")

Party

Pursuant to Articles 1116, 1117 and 1119 of the North American Free Trade Agreement ("NAFTA"), the Investor, Gallo, serves a Notice of Intent to Submit a Claim to Arbitration on behalf of 1532382 Ontario Inc., an Enterprise that is owned and controlled by the Investor, for breach of the Party's obligations under the North American Free Trade Agreement.

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A. NAME AND ADDRESS OF DISPUTING INVESTOR AND ENTERPRISE

INVESTOR: Vito G. Gallo

ENTERPRISE: 1532382 Ontario Inc.
225 Duncan Mill Road
Suite 101
Don Mills, ON M3B 3K9

B. BREACH OF OBLIGATIONS

The Investor alleges that Canada has breached its NAFTA obligations under Section A of Chapter 11 of the NAFTA including, but not limited to the following provisions:

(ii) Article 1105 – Minimum Standard of Treatment
(iii) Article 1110 - Expropriation and Compensation .

The relevant portions of the NAFTA include:

Article 1105: Minimum Standard of Treatment

1. Each Party shall accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.

2. Without prejudice to paragraph 1 and notwithstanding Article 1108(7)(b), each Party shall accord to investors of another Party, and to investments of investors of another Party, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

Article 1110: Expropriation and Compensation

1. No Party may directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment ("expropriation"), except:

(a) for a public purpose;

(b) on a non-discriminatory basis;

(c) in accordance with due process of law and Article 1105(1); and

(d) on payment of compensation in accordance with paragraphs 2 through 6.

2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation"), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.

3. Compensation shall be paid without delay and be fully realizable.

4. If payment is made in a G7 currency, compensation shall include interest at a commercially reasonable rate for that currency from the date of expropriation until the date of actual payment.

5. If a Party elects to pay in a currency other than a G7 currency, the amount paid on the date of payment, if converted into a G7 currency at the market rate of exchange prevailing on that date, shall be no less than if the amount of compensation owed on the date of expropriation had been converted into that G7 currency at the market rate of exchange prevailing on that date, and interest had accrued at a commercially reasonable rate for that G7 currency from the date of expropriation until the date of payment.

6. On payment, compensation shall be feely transferable as provided in Article 1109.

7. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with Chapter Seventeen (Intellectual Property).

8. For purposes of this Article and for greater certainty, a non-discriminatory measure of general application shall not be considered a measure tantamount to an expropriation of a debt security or loan covered by this Chapter solely on the ground that the measure imposes costs on the debtor that cause it to default on the debt.

C. FACTUAL BASIS FOR THE CLAIM AND ISSUES

(i) FACTUAL BASIS FOR THE CLAIM

The Investor and the Investment

1. The Investor, Gallo, is an American citizen resident in Pennsylvania.

2. The Investment is 1532382 Ontario Inc, a company incorporated under the laws of the province of Ontario ("the Enterprise.")

3. Gallo owns and controls the Enterprise.

4. The Enterprise owns and controls the Adams Mine property, a former iron ore mine located in Northern Ontario about 10 kilometres south-east of the town of Kirkland Lake.

5. The Adams Mine property is an ideal site for landfill. It is a decommissioned, open-pit iron ore mine with excellent rail and road access. Until 1989 iron ore was being extracted from its three, deep open-pits by two mining companies.

6. The South Pit of the Adams Mine is 200 metres deep and is capable of receiving 1 million tonnes of non-hazardous municipal, industrial and commercial waste each year. The South Pit alone has a total capacity of at least 20 million tonnes.

7. The South Pit is designed to operate as a landfill using the hydraulic containment method. Under this method, when the waste reaches the site all metal, glass, plastic and wood are separated for recycling and resale. The remaining waste is then deposited in the South Pit.

8. Any leachate generated from the deposited waste drains to a containment basin and is then pumped to an environmentally approved leachate treatment plant. Unlike the mature landfills located in soil and clay conditions in Southern

Ontario, the rock walls of the South Pit and the leachate treatment plant prevent leachate from seeping into adjacent lands.

The Need for New Landfill Sites

9. In 1986, the Municipality of Metropolitan Toronto ("Toronto") determined that Toronto's Keele Valley municipal waste site located just north of the city had a limited lifespan. Toronto began searching for its next generation landfill.

10. The Enterprise's predecessor in title, Notre Development Corporation ("Notre"), identified the Adams Mine as a leading replacement site for Toronto as early as 1986. Notre purchased the Adams Mine from the two mining companies in 1989 with the intention of developing it as an environmentally sound landfill site for the Greater Toronto Area ("GTA") after the Keele Valley site reached maximum capacity in the late 1990s.

11. In 1989, Toronto and five surrounding municipal regions strategy on waste established the Solid Waste Interim Steering Committee ("SWISC") to identify solutions to their waste management issues. SWISC published its comprehensive Request for Proposals throughout North America inviting companies to provide their ideas for disposal capacity and/or waste diversion for the GTA.

12. Notre responded to SWISC's Request for Proposal, as did several other companies, including the Ontario Northland Transportation Commission and the Canadian National Railway. The three companies joined forces to create a rail-based waste management option for the GTA. Under this rail option, Toronto's waste would be compacted and then transferred to a railway site north of Toronto. The compacted waste would then be loaded onto specially designed railcars and hauled to the Adams Mine, then unloaded, separated and either sent for recycling or deposited into the South Pit. The option included added capacity, in the expectation that other GTA municipalities would also adopt the rail option.

13. Notre invited Toronto to examine the hydraulic containment method of waste diversion and allowed the city's environmental experts access to the Adams Mine. Notre also consulted with surrounding municipalities and retained more than a dozen environmental firms to assess both the hydraulic containment method and the environmental impact of having a landfill site at the Adams Mine. The expert studies supporting the proposed methodology and the proposed Adams Mine site were subjected to peer review and the results were uniformly positive.

The Environmental Approvals

14. Notre's proposal for the Adams Mine required that it obtain several major environmental approvals:

(a) approval under the Ontario Environmental Assessment Act ("EAA");

(b) approval of a waste disposal site under the Ontario Environmental Protection Act ("EPA");

(c) approval of a leachate treatment facility and storm water management facilities under the Ontario Water Resources Act ("OWRA"); and

(d) approval to take water from the South Pit, a Permit to Take Water ("PTTW") under the OWRA.

15. Notre began by submitting an initial environmental assessment approval application in 1996. The 1996 environmental assessment application, however, restricted Notre's application to the South Pit only.

16. In 1996, Notre also discovered that the Crown leases of the lands surrounding the Adams Mine property ("the Borderlands") were about to expire and it began to explore the possibility of purchasing or leasing the Borderlands from the Crown in order to support the Adams Mine site.

17. In 1997, the Ontario Environmental Assessment Board ("EAB") approved the environmental assessment application after conducting a hearing at Kirkland Lake that lasted 17 days and involved 40 witnesses, including 20 experts.

18. In 1998, Notre received the required Certificate of Approval from the Ontario Ministry of the Environment ("MOE") to operate a landfill. The Certificate of Approval had as one of its conditions that Notre purchase the Borderlands from the Crown. Notre again approached the Crown, represented by the Ministry of Natural Resources ("MNR"), about purchasing the Borderlands.

All Final Approvals Received

19. By the end of 2001, after almost six years of effort, including hundreds of days of hearings and tribunal appeals, and numerous unsuccessful court challenges by special interest groups, the Enterprise's predecessor in title had obtained all of the required governmental approvals for the Adams Mine site:

(a) Approval of its project under the EAA, dated August 13, 1998;

(b) Approval to operate a landfill site under the EPA, on the condition that Notre acquired the Borderlands from the Crown, Certificate of Approval No. A612007, dated April 23, 1999;

(c) Permit to Take Water from the South Pit, PTTW No. 00-P-6040, dated October 18, 2000;

(d) Approval to operate a leachate treatment facility and storm water facility under the OWRA, Approval No. 3250-4NMPDN, dated July 9, 2001.

20. In May, 2002, the Enterprise purchased the Adams Mine site from Notre. In September, 2002, the transfer in ownership of the Adams Mine property was duly registered in the Temiskaming Land Registry Office.

21. Shortly thereafter, the Enterprise finally secured a commitment from the Crown that it would sell the Borderlands to the Enterprise. After securing an independent property appraisal, the Crown offered to sell the Borderlands to the Enterprise at a fixed price and gave the Enterprise three months to accept the offer. The Crown's offer to sell was dated February 17, 2003.

22. On April 11, 2003, the Enterprise accepted the Crown's offer and tendered by certified cheque the price fixed by the Crown. At law and/or in equity, the Enterprise was now the owner in title of the Borderlands and had satisfied all of the conditions to operate its landfill at the Adams Mine, with one minor exception.

23. The initial PTTW had expired in 2001. Notre had applied for a new PTTW in January 2002. The MOE undertook in writing that it would issue the approval "promptly" on being given six months' notice of any intention to commence dewatering, provided that there were no substantial environmental changes in the interim. This offer was accepted in writing by Notre.

24. On July 7, 2003, the Enterprise submitted its notice to the MOE that it intended to recommence dewatering at the South Pit. In accordance with the MOE's requirement of January, 2002, the Enterprise submitted an expert opinion that there had been no substantial environmental changes. The Enterprise expected that the MOE would honour its agreement of January, 2002 to issue the PTTW promptly and also expected that the MNR would honour its agreement of April, 2003 to transfer the Borderlands to the Enterprise.

Interference by the New Government

25. In October 2003, a new government was elected in Ontario. The new government began taking the first of several steps to shut down the Adams Mine landfill site outright and put the Enterprise out of business:

(a) It ordered civil servants within the MNR to breach the agreement of April, 2003, and refuse to transfer the Borderlands;

(b) It ordered civil servants within the MOE to breach the agreement of January, 2002 and the draft PTTW issued by the MOE in November, 2003 and refuse to issue a final PTTW to the Enterprise.

The Enactment of the Adams Mine Lake Act

26. On April 5, 2004, the new government introduced and gave First Reading to Bill 49, "An Act to Prevent the Disposal of Waste at the Adams Mine Site" ("Bill 49"). On June 17th, 2004, Bill 49 was enacted and on the same day it received Royal Assent and was proclaimed in force.

27. Bill 49 imposed the following legislative measures that were aimed directly at the Enterprise and its use of Adams Mine:

- a blanket prohibition against the disposal of waste at the Adams Mine site;
- the specific revocation of all of the environmental and operational permits and approvals that had been properly issued by governmental agencies granting and allowing the Adams Mine site to be used as a solid waste landfill site;
- the retroactive ban of any and all agreements that the Enterprise may have entered into over the last 15 years regarding the purchase or sale of Crown lands;
- the retroactive extinguishment of any and all causes of action that the Enterprise may have had against the Government of Ontario regarding the Adams Mine site for anything that may have occurred over the last 15 years, the provision stating:

> Extinguishment of causes of action
>
> 5(1) Any cause of action that exists on the day this Act comes into force against the Crown in right of Ontario, a member or former member of the Executive Council, or an employee or agent or former employee or agent of the Crown in right of Ontario in respect of the Adams Mine site or the lands described in Schedule 1 is hereby extinguished.
>
> 5(2). No cause of action arises after this Act comes into force against a person referred to in subsection (1) in respect of the Adams Mine site or the lands described in Schedule 1 if the cause of action would arise, in whole or in part, from anything that occurred after December 31, 1988 and before this Act comes into force.

- the denial of all access to the courts, except on a very narrowly defined basis, the provision stating:

> 5(7). No action or other proceeding shall be commenced or continued by any person against a person referred to in subsection (1) in respect of a cause of action that is extinguished by subsection (1) or a cause of action that, pursuant to subsection (2) or (4), does not arise.

- the denial that the passage of the statute constituted an expropriation:

> 5(10) Nothing in this Act and nothing done or not done in accordance with this Act constitutes an expropriation or injurious affection for the purposes of the *Expropriations Act* or otherwise at law.

- the denial of any compensation other than the limited and inadequate reimbursement of certain specified expenses, which excluded *inter alia*:

  (i). any loss of goodwill or profits;

  (ii). the value of the land;

  (iii). The value of any and all of the required government approvals in a province in which such approvals are a very scarce commodity; and

  (iv). The value of the legal and/or equitable ownership of the Borderlands in combination with the Adams Mine Site.

28. The intent of Bill 49 was clear and beyond dispute: to shut down the Adams Mine property as a solid waste landfill site and to put the Enterprise out of business.

Contravention of Articles 1110 and 1105

29. Under Article 1110 of the NAFTA, no Party may directly or indirectly expropriate an investment of an investor of another Party in its territory or take a measure tantamount to the expropriation of such investment except for a public purpose, on a non-discriminatory basis, in accordance with due process of law and Article 1105.1, and on payment of compensation.

30. The compensation paid "shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place," shall not reflect any change in value occurring because of the intended expropriation and valuation criteria must include going concern value, asset value and such other criteria as appropriate to determine fair market value.

31. The enactment by the Government of Ontario of Bill 49 is a legislative measure that amounts to the direct or indirect expropriation of Gallo's investment in the Enterprise which owns and controls the Adams Mine site. The enactment by the Government of Ontario of Bill 49 is also a legislative measure that is "tantamount to expropriation" because, *inter alia,* its purpose and effect is to shut down the Adams Mine site and put the Enterprise out of business.

32. The enactment by the Government of Ontario of Bill 49 contravenes the requirements set out in Articles 1105 and 1110 in at least five ways:

(1) Bill 49 contravenes Article 1105(1) which requires that each NAFTA Party accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment, and full protection and security.

In particular, Bill 49 contravenes the standard of treatment required as the expropriation of the Enterprise's use of the Adams Mine site as a solid waste landfill is an arbitrary and discriminatory law; it revokes pre-existing permissions and approvals that were properly granted by governmental authorities; it breaches both the Investor's and the Enterprise's legitimate expectations; it directly prevents the Enterprise from carrying on the business that it intended to pursue; and its purpose and effect is to put the Enterprise out of business.

(2) Bill 49 contravenes Article 1110(1)(b). It is a highly discriminatory measure that is targeted specifically at the Enterprise to deny the use of the Adams Mine site that had earlier been approved by the Government of Ontario.

(3) Bill 49 contravenes Article 1110(1)(c). The legislative measure is not in accordance with either "due process of law" or the requirements of Article 1105(1). Bill 49 violates the requirements of "due process of law" by denying the Enterprise the right to fair

notice and the right to be heard; by retroactively revoking pre-existing permissions and approvals properly granted by governmental authorities; by retroactively extinguishing all causes of action arising in whole or in part from "anything" that may have occurred up to 15 years before Bill 49 was even enacted; by failing to consider the fair market value of the Adams Mine site as a solid waste facility; and by denying reasonable access to the courts of justice in violation of both due process and the rule of law.

(4) Bill 49 contravenes Article 1110(1)(d) and the requirement set out in subparagraph (2) that the compensation payment be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place and "not reflect any change in value occurring because the intended expropriation had become known earlier".

Under the provisions of Bill 49 the fair market value of the investment is completely ignored and legislated to be irrelevant.

(5) Bill 49 is in breach of Article 1110(2) which requires that the criteria to determine the fair market value of the expropriated investment is to include the "going concern value, asset value ... and other criteria, as appropriate." Bill 49 specifically provides that "no compensation is payable ... for any loss of goodwill or possible profits". Fair market value is not determined immediately before the expropriation took place and when the possible enactment of Bill 49 was still unknown. As a result, the fair market value of the Adams Mine site is not determined when the investment enjoyed all environmental approvals and it was the legal and/or equitable owner of the Borderlands. Instead, the calculation of compensation which is clearly inadequate in the circumstances is determined "on the day the Act comes into force," two months after the intended expropriation first became known and the fair market value of the Adams Mine site was reduced to virtually zero.

33. In summary, the enactment of Bill 49 is a legislative measure that contravenes Articles 11105 and 1110. Canada's conduct in this regard is inconsistent with its obligations under the NAFTA.

34. The Enterprise has incurred loss or damage as a result of Canada's breach of its NAFTA Chapter 11 obligations.

35. Canada must compensate the Enterprise under Article 1117 for the damages caused by its failure to act in a manner that is consistent with its NAFTA obligations.

36. In the alternative, Canada must compensate the Investor under Article 1116 for the damages caused by its failure to act in a manner that is consistent with its NAFTA obligations.

(ii) ISSUES

1. Is Bill 49 inconsistent with Canada's obligations under Section A of NAFTA Chapter 11, including but not limited to Articles 1105 and 1110?

2. If the answer to question 1 is yes, what is the quantum of compensation to be paid to the Enterprise under Articles 1117 and 1135(2)(b) or, in the alternative the Investor under Article 1116, as a result of the failure of the Government Canada to comply with its obligations under Chapter 11 of the NAFTA?

D. RELIEF SOUGHT AND APPROXIMATE AMOUNT OF DAMAGES CLAIMED

The Investor claims damages on behalf of the Enterprise for the following:

1. Damages in the amount of $355,100,000.00 as compensation for the damages caused by, or arising out of, Canada's measures that are inconsistent with its obligations contained in Part A of Chapter 11 of the North American Free Trade Agreement.

2. Costs associated with the expropriation, these proceedings, including all professional fees and disbursements.

3. Fees and expenses incurred to oppose the effect of the measure.

4. Pre-award and post-award compound interest at a rate to be fixed by the Tribunal.

5. Tax consequences of the award to maintain the integrity of the award.

6. Such further relief that counsel may advise and that this Tribunal may deem appropriate.

DATE OF ISSUE: October 12th, 2006

BENNETT GASTLE P.C.
Barristers and Solicitors
36 Toronto, Street, Suite 250
Toronto, Ontario
M5C 2C5

Charles M. Gastle

(416) 361-3319 Ext. 222
(416) 361-1530 (Fax)
cgastle@bennettgastle.com

Mr. Murdoch Martyn
Barrister & Solicitor
94-33 Hazelton Avenue
Toronto, ON
M5R 2E3

Tel: (416) 433-2890
Fax: (416) 964-2328

Solicitors for the Investor

SERVED UPON:

Office of the Deputy Attorney General of Canada
Justice Building
284 Wellington Street
Ottawa, Ontario
K1A 0H8